

Beware the Cost of the Unpaid Intern



Work that provides an employer with an economic gain generally must be paid

Question: The adult child of a friend is returning to the workforce after a two year period of unemployment due a health problem. She has requested the opportunity to work without pay for a few months in my workplace so she can gain work experience. We are a small private business and have never had volunteers in the past. She has asked if we would identify her as an unpaid intern for the purposes of her resume. Should I bring her on as an intern or volunteer?

Agreeing to Work Gratis May Not Be Enough

If a newly minted graduate walked through your door with an offer to 'work for free to gain experience for 3 months,' would you take her up on it? What about an immigrant, or perhaps a parent returning to the workforce after several years' absence to raise children? In these cases, bringing individuals onboard without pay would most likely run afoul of your Provincial Employment Standards.

In Canada, there are distinctions between what constitutes a 'volunteer', 'intern' (including unpaid interns), 'co-op' or 'practicum' student and an employee. In many cases, an intern may be considered an employee unless certain standards are met.

Who Is an Employee?

When determining the difference between an employee and an independent contractor, you consider details such as who controls the work, the regularity of the work, and who defines how the work must proceed. In Canada, common law defines an employee as one who performs work where the employer gains an economic advantage from the work and exercises a high degree of control and direction over the work and the worker. Interns will often meet this definition, as they: 1) are usually required to be at work for set hours; 2) answer to a boss who identifies and assigns their work and the timeline for completion; 3) are not free to come and go as they please, and; 4) provide an economic benefit to the company for which they work.

Depending on your jurisdiction, a current student engaged in a practicum, which also may be called a placement or an internship, may be an exception to the definition of an employee in some provinces. A practicum is generally considered to be hands-on training for students required by the curriculum of a post-secondary institution (public or private) that results in a degree or diploma.

In British Columbia: an employee is defined as, “a person an employer allows, directly or indirectly, to perform work normally performed by an employee” and “a person being trained by an employer for the employer’s business.” In most cases, unpaid interns fall within one of these two definitions and are therefore entitled to wages. There is a potential exception as the B.C. Employment Standards interpretation guideline makes a distinction between a practicum and an internship. The B.C. Guide states that a practicum is not considered “work” under the B.C. Employment Standards Act.

In Alberta: a student engaged in “(i) in a formal course of training approved by the director, (ii) in an off-campus education program provided under the School Act, or (iii) in a work experience program approved by the Minister of Enterprise and Advanced Education, or, the Minister of Human Services” may not be defined as an employee and thus an employer would not be required to pay wages.

In Ontario: an employee is defined as, “an individual who receives training from an employer and whose skills are used by the said employer”. The individual is not defined as an employee if the following exceptions apply:

1. The training is similar to that which is given in a vocational school.
2. The training is for the benefit of the individual.
3. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained.
4. The individual does not displace employees of the person providing the training.
5. The individual is not accorded the right to become an employee of the person providing the training.
6. The individual is advised that he or she will receive no remuneration for the time that he or she spends in training.”

If you are in Ontario, read more in the HR Insider in the article [Ontario Explains When It’s OK to Not Pay Interns](#). You will also want to be aware of new legislation that recently came into effect which includes changes to an employer’s obligation to provide Health and Safety protection to students and interns. Read more here: [Ontario Government Proposes Major Changes To Workplace Legislation](#).

People Cannot Agree to Sign Away Their Rights

If this person files an employment standards complaint, the onus is on you to demonstrate that this person was actually an unpaid intern or volunteer rather than an employee. If you are a for-profit business, this is very difficult to demonstrate. This would be the case even if this person provided a letter declaring that she agreed to work for free because in Canada a person cannot sign away their protected rights.

For both an employer and an individual trying to gain an edge in a competitive employment landscape, the opportunity to partner for the benefit of both parties can be attractive. Offering someone the opportunity to gain skills and experience and in exchange gaining an extra hand at no cost can sound attractive to both parties. However, if this person is not part of a school program, may be better off inviting the individual to do a job shadow. Alternatively, bring this person on for a few hours a week and pay her a minimum wage. You may also consider offering a limited contract position.

Another option you may explore, depending on your jurisdiction: if this person has had health problems that caused her to be disabled there may be programs that support her financially as she returns to work which supplement her wages.

In a difficult economy many people are willing to 'volunteer' in an unpaid role to gain experience, make connections, and prove themselves to potential employers. If an individual is willing to work for your company for free, you are not off the hook regarding fair compensation. When an individual is engaged in 'work' there are rules that apply to whether or not that person is an employee and what rights they are afforded.